IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.
CRIMINAL WRIT PETITION No.2505/2006.

Sutar Pramod Somnath. ..Petitioner.

Vs.

The State of Maharashtra & Ors. ..Respondents.

Mrs A.M.Z. Ansari for the Petitioner.

Shri D.S. Mhaispurkar, A.P.P.for the State.

CORAM:SMT.RANJANA DESAI
AND V.C. DAGA,JJ.
DATED:15TH JUNE, 2007.

ORAL JUDGMENT (Per : Smt. Ranjana Desai,J)
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1. The petitioner is the brother of one Sutar Narendra Somnath,(the detenue for convenience) who is detained under the impugned order dated 21.8.2006 issued under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 by the Principal Secretary (Appeals and Security), Government of Maharashtra, Home Department and Detaining Authority at Mumbai. The order of detention is issued with a view to preventing the detenue in future from smuggling goods. It was served on the detenue on 16.10.2006. The detenue is under detention since then.

2. In short, it appears to be the case of the detaining authority as disclosed in the grounds of detention and material in support thereof that the detenue was found smuggling foreign currency out of India without declaring it to the customs. Considering the nature and gravity of the prejudicial activity in which the detenue was involved, the manner of its commission and other attendant circumstances the detaining authority was satisfied that unless the detenue is preventively detained, the detenue was likely to indulge in similar prejudicial activities in future and hence it was necessary to detain him to prevent him from indulging in similar prejudicial activities, in future.

3. Mrs Ansari, learned counsel appearing for the detenue has assailed the impugned order on the sole ground that there is an unexplained delay in considering representation addressed by the detenue to the detaining authority and this has resulted in violation of the detenue's rights under Article 22 (5) of the Constitution of India.

According to her, the order of detention is liable to be set aside on this ground.

4. We have also heard Mr Mhaispurkar, learned A.P.P. He submits that delay in considering representation has been satisfactorily explained by the detaining authority. He further submits that it is not necessary for the detaining authority to explain what was done on each and every day while considering representation. The learned A.P.P. urged that the explanation offered by the detaining authority for the delay should be accepted and the detention order should be confirmed.

5. It is the case of the detenue that he had handed over representation addressed, inter alia, to the detaining authority to the Superintendent of Nasik Road Central Prison, Nasik on 17.11.2006 and that the said representation was rejected by the detaining authority on 20.12.2006. The rejection reply was served on the detenue on 12.1.2007. According to the detenue, time taken to

consider the representation has not been properly explained by the detaining authority and hence the detention order should illegal and is liable to be set aside.

6. The affidavit of Dr. Bhaidas N. Dhole, Jailer Group - I, attached to Nasik Road Central Prison, Nasik indicates that the joint representation addressed by the detenue to the detaining authority and two other authorities, dated 17.11.2006 was handed over to him on the very same day i.e. on 17.11.2006. The Superintendent of Nasik Road Prison forwarded it to the respective authorities on 20.11.2006. We find that this explanation is satisfactory and till this date there is absolutely no delay.

7. The relevant paragraph of the affidavit of the detaining authority reads as under:

> "With reference to paras 4 (vi) and 4 (ix) of the petition, regarding representation addressed to the

detaining authority, it is submitted that the representation dated 20.11.2006 addressed to the Principal Secretary (Appeals and Security) to the Government of Maharashtra was received in the Department through the Superintendent of Nasik Road Central Prison, Nasik on 24.11.2006. The said representation was signed by the detenue on 20.11.2006. In respect of the said representation, the concerned Assistant prepared a note on 27.11.2006 and forwarded the file to the Under Secretary who gave his endorsement on the same day. Thereafter parawise remarks were called from the Sponsoring Authority vide letter dated 27.11.2006. I say that during this period 25.11.2006 and 26.11.2006 were holidays on account of Saturday and Sunday. The remarks of the Sponsoring Authority dated 14.12.2006 were received in the department on 14.12.2006.

Thereafter the concerned Assistant prepared the detailed note on 16.12.2006

and forwarded the file to the Under Secretary who gave his endorsement on 16.12.2006 and forwarded it to the Deputy Secretary who gave his endorsement on 18.12.2006 and forwarded the papers to me, I after carefully going through the same rejected the representation on 8.1.2007. I say that during this period there were holidays on 23.12.2006 and 24.12.2006 on account of Saturday and Sunday and on 25.12.2006 on account of Christmas I was on leave from 24.12.2006 to 28.12.2006. On 28.12.2006 and 29.12.2006, I was busy in the meeting and on 31.12.2006 and 1.1.2007 were holidays on account of Sunday and Idd. Thereafter the file was sent to the Desk which was received in the desk on 8.1.2007. Thereafter the concerned Assistant prepared the draft rejection reply on 9.1.2007 and forwarded the same to the Under Secretary for his approval. Under Secretary gave his endorsement on the same day and forwarded it to the Deputy

Secretary. The Deputy Secretary gave his endorsement on 10.1.2007 and thereafter the rejection reply was issued on 10.1.2007 and was sent to the detenue in Nasik Road Central Prison, Nasik. I state that thus the representation addressed to the detaining authority was considered carefully expeditiously and without being influenced by the opinion of any other authority."

8. It is evident from the above paragraph that the parawise comments were called from the Sponsoring Authority vide letter dated 27.11.2006 and the remarks from the Sponsoring Authority dated 14.12.2006 were received in the department on the very same day. In order to explain this delay, an affidavit has been filed on behalf of the Sponsoring Authority by Shri. T.B. Gaikwad, Assistant Commissioner of Customs, COFEPOSA Cell, CSI Airport, Mumbai. According to him, letter dated 27.11.2006 was received by the Sponsoring Authority on 6.12.2006 by post, and

thereafter, parawise comments were prepared and forwarded by letter dated 14.12.2006. It is stated that during the said period there were holidays on 9.12.2006 and 10.12.2006. Even if, we consider that there were two holidays during the intervening period, we find that there was no reason for the Sponsoring Authority to take so much time to forward parawise comments to the detaining authority. This delay, in our opinion, has not been properly explained. But even assuming it to be a proper explanation, further unexplained delay caused at the end of detaining authority in our opinion, has resulted in rendering continued detention of the detenue illegal.

9. Admittedly, the representation was forwarded to the detaining authority on 18.12.2006. The detaining authority has stated that 23rd and 24th December, 2006 were holidays being Saturday and Sunday and that 25th December, 2006 was also holiday on account of Christmas. The detaining authority has further gone on to say that she was on

leave from 24.12.2006 to 28.12.2006. It is further stated that on 28.12.2006 and 29.12.2006 she was busy in the meeting and on 31.12.2006 and 1.1.2007 there were holidays on account of Sunday and Idd.

10. From the affidavit of the detaining authority it is evident that she could not consider the representation on 23.2.2006, 24.12.2006, 25.12.2006, 30.12.2006 and on 1.1.2007 because those were holidays. We feel that the detaining authority's approach is casual. Representation of a person who is preventively detained cannot be considered in such a light hearted and callous manner. Even if it is assumed that the explanation that there were holidays can be accepted, the detaining authority's further explanation compounds the lapse. She has stated that she was on leave from 24.12.2006 to 28.12.2006. If she wanted to go on leave, in the circumstances some arrangement should have been made for prompt action on the representation. At least after resuming for work, she should have promptly disposed of the

representation. According to her, on 28.12.2006 and 29.12.2006 she was busy in the meeting. This approach violates the detenue's right under Article 22(5) of the Constitution of India. It is pertinent to note that the detaining authority rejected the representation on 8.1.2007. Draft rejection reply was prepared on 9.1.2007 and rejection reply was issued on 10.1.2007. It was served on the detenue on 12.1.2007. Therefore, there is a delay even in communicating the rejection reply. In the facts of this case, we are satisfied that the time taken to consider the representation has not been properly explained by the detaining authority. The continued detention of the detenue is therefore rendered illegal.

11. In this behalf, we may usefully refer to the judgment of the Supreme Court in **Harshala Santosh Patil vs. State of Maharashtra and Ors. 2007 (1) SCC (Cri) 680,** where in some-what similar fact situation similar contention was accepted by the Supreme Court. We therefore hold that the continued detention

of the detenue under the order of detention dated 21.8.2006 is bad and illegal.

12. In the result, continued detention of the detenue Sutar Narendra Somnath under the impugned order of detention dated 21.8.2006 is set aside. The detenue - Sutar Narendra Somnath be released forthwith unless otherwise required in any other case. The petition is disposed of.

(V.C. DAGA,J.) **(SMT. RANJANA DESAI,J.)**